7-1-1936

# Court Cases Relating to Residence and Tuition in Public Schools

Edward F. Bohnhoff

# COURT CASES RELATING TO RESIDENCE AND TUITION IN PUBLIC SCHOOLS

A Thesis

Submitted to the Graduate Faculty

of the

University of North Dakota



by

Edward F. Bohnhoff

In Partial Fulfillment of the Requirements

for the

Degree of

Master of Science in Education

July, 1936

This thesis, offered by Edward Bohnhoff as a partial fulfillment of the requirements for the degree of Master of Science in Education in the University of North Dakota, is hereby approved by the committee under whom the work was done.

J. Frederick Weltzin
Chairman

C. W. Telford

J. Duane Squires

J. V. Breitwieser
Director of the Graduate Division

## ACKNOWLEDGMENTS

The writer is indebted to Dr. J. Frederick Weltzin, Professor of Education in the University of North Dakota, for the inspiration, encouragement, and guidance which has made it possible for him to work out and write this study. The writer is especially appreciative for the consideration received during a period of strenuous activity for Dr. Weltzin.

TABLE OF CONTENTS

# CHAPTER 1

## INTRODUCTION

Tuition is of general interest for three reasons. First, in times like the present, particularly those of the past few years, there has been much discussion as to the feasibility of charging the patrons of the schools tuition. Second, with the extending of the free public schools beyond the eighth grade, there has been some question if the high school should be included in the free public school system. Third, some states having the sales tax with which to help support schools allot the money to high schools by paying the tuition of non-resident students.

With the decline of tax receipts due to tax delinquencies and laws reducing the amount that might be levied, it was seriously considered by many that tuition should be charged to enable the school to continue to render high class service. In some instances, the School Boards took the initiative and set tuition rates for their own resident students. In a few states, the legislatures passed laws enabling the School Boards to charge tuition. This charge was not for special courses or the like, but for the privilege of attending school. School districts that did not, or could not, support schools fought the payment of tuition to other districts where the children of their district attended school.

While much of this was due to the fact that it was

difficult or impossible to pay, there was also an ideal of the American school system at stake. The question was, how free was the free public school system of America?

With the high school, some have felt that tuition could be charged as it was not included in the range of free public schools. Where the State Legislature has set the amount of tuition that should be paid, there was conflict with the schools that maintained a higher standard than the average. This, of course, led to a demand for the patrons to pay the difference. Such a demand was naturally contrary to the principles of free public education.

Residence is of importance for the reason that where tuition is charged, it is based upon residence. In general, it may be said that the free public schools are free only for those who reside in the district. The main object, then, is to establish the principles that determine residence.

## Purpose

The purpose of this study will be to examine the Supreme Court cases of the different states that deal with residence and tuition. The principles established by these cases will be set up and illustrated by court cases.

The purpose of this study has five aspects, namely; (1) To examine the court cases to determine the status of residence of parents. (2) To examine the court cases to determine the residence of homeless children. (3) To examine the court cases to determine the payment of tuition

by resident students. (4) To examine the court cases to determine the payment of tuition by non-resident students. (5) To examine the constitutionality of tuition laws.

## Statement of the Problem

The Superintendent, the Principal, and the School Board must know the principles that establish a student as a resident or non-resident. They must know when tuition can be charged, from whom collected, and how much may be charged.

The problem of this study is focused upon setting up the principles that the Supreme Courts of the various states have established to these ends.

## Sources of Data

The material for this thesis was obtained by going to the descriptive word dictionary and finding the division and key to look for. Then the Corpus Juris was examined to form a basis for the study. The Century Digest and the second and third Decennial Digests were examined for cases pertaining to the subject and listed. In addition to this, the Current Digests up to 1935 were examined for the same purpose. This list of cases was then read in the various sectional court reports and briefed and filed.

## Delimitations

This study is limited to the study of State Supreme Court cases dealing with residence and tuition. No study of the State Statutes will be made. No attempt will be made to establish the law on residence and tuition. The study

will be limited to a report of the findings of the different State Supreme Courts on residence and tuition.

## Method of Study

First, a list of cases was compiled from the sources listed above (Sources of Data). These cases were then read and briefed from the various sectional court reports. The briefs were then grouped and arranged according to the principles they illustrated, and from this basis the thesis was written.

## CHAPTER 2

## RESIDENCE FOR SCHOOL PURPOSES

Proof of Residence. The public schools of a state are, in general, open to children, otherwise eligible, who are bona fide residents. The test for this proof of residence should be ordinary indicia of residence or absence. It may be assumed, with evidence not to the contrary, that the basis for residence has been made in good faith. Speculation as to the secret mental intentions of persons shall not enter into the evidence. In other words, the intentions as stated by witnesses without direct evidence to the contrary shall be as given.

Residence for school purposes is based primarily upon the purpose that person has for being in the district. A person moving into a district for the purpose of taking advantage of the schools of the district will be held to be a non-resident. A person in the district for the purpose of having a home is a resident. Parents moving to a district to work and make their domicile there are residents, each case must rest upon the merits of the case.[1]

Residence of State Officials. Residence for school purposes does not have to be a legal domicile, that is, the test for residence for school purposes is not the same as for suffrage, in fact, it is possible to vote one place

[1]Grosland v. School District No. 40 (1904) 91 Minnesota 268, 97 N. W. 885.

and have school residence in another.[2] The governor and superintendent of public instruction in Nebraska lived in the state capitol, Lincoln, during the terms of their office. Their legal voting residence was elsewhere in the state. They applied for admittance to the Lincoln city schools for their children as resident students. The Board of Education held that they were non-resident students. There was no doubt that the relation between the parents and children was parental and permanent. The families had not moved to Lincoln for the purpose of taking advantage of the educational facilities, that was evident. It was held by the Board of Education that the legal residence of the families being elsewhere, they could not gain residence in Lincoln for school purposes. The court held that "a family having legal custody and control of children and move for purposes other than for school privileges, the children are entitled to free tuition even though their legal residence is elsewhere."

Establishing a New Residence. In changing domiciles and establishing a new domicile, two things are indispensable.[3] First, a residence in a new location, and second, the intention to stay there. To change residence and to reside at this residence over a period of a year or even more would not in itself constitute a change of residence.

---

[2]Mickey v. Selleck (1906) 76 Neb., 747, 107 N. W. 1022.
[3]Gardner v. Board of Education of City of Fargo, (1888) 5 Dak., 259, 38 N. W. 933.

The intent must be, as far as the parties know, to stay at the new residence and not have plans or knowledge of a further change. The fact that the stay in the new residence would be long enough to establish a voting residence would not in itself establish a residence for school purposes.

Mr. Gardner,[4] a farmer, moved to Fargo every winter with his family. Part of his household goods were taken along and the family lived in a rented house. A man was hired to take care of the farm. The issue was to determine which place was the true domicile or home, the house in the city or the farm. It was held that "the more tangible domiciliary acts have the greater weight in determining the true domicile." In this case, it was decided that the farm was considered the home and that Gardner was a non-resident.

Residence in Federal Territory. A federal official is, on the other hand, not a resident of any district. Being a federal employee and living in federal territory, he is not a resident of any school district. The point in law that he has not moved for the purpose of taking advantage of any educational facilities has no bearing on the case. The rules governing the validity of a residence for school purposes in this case have no standing. It is impossible to set up a school residence while living in fed-

---

[4] Ibid.

eral territory, even though the school district surrounds the territory. A federal territory is under the direct supervision of the federal government and the states are without authority. The schools of a state are set up by the state authority for the residents of that state of school age. However, a federal employee does not lose residence by moving to a federal territory. For instance, he may continue to vote in his former legal residence. Therefore, if he has had legal residence in the state in which the federal territory is located, he can claim free tuition.[5] Otherwise, his children must pay tuition.

Temporary Residence in a District. Generally speaking, children whose parents are not residents of a school district are not permitted to attend school in that district. When they are permitted to attend, it is by permissive state legislation. Children placed temporarily with relatives in one school district and with a father living in another school district are held legal residents of the district their father resides in.[6] The test for residency failed on two points: First, the relation between the children and the relatives was not parental and permanent. Second, they were placed with the relatives to take advantage of the educational facilities afforded.

A case much the same but with a different angle was

[5]Rockwell v. Independent School District of Rapid City, (1925) 48 S. D. 137

[6]Fangman v. Mayers (1931) 8 P. (2nd) 762.

that of Bordewyk.[7] Bordewyk, a resident of a school district moved away from the district during the school year. Upon leaving, he placed a child under the care of his brother, giving him full charge. The evidence had to show that the uncle was "en loco parentis" or the father would have to pay tuition. The evidence had to be accepted as presented as there could be no speculation as to the secret mental intentions of the father. It could not be held that the girl had been brought to the district for educational advantages as she had been a resident for school purposes.

A child who has had school residence in a district may be placed with a family in that district for the sole purpose of having a home with desirable influences.

Where parents are divorced or separated, the children can be left in the district where the parents had established residence.[8] In this case, the parents were separated and both moved away from the district. One of them continued to support the child in the old school district and it was held that the child was still a resident. The guardianship, of course, had to be parental and permanent.

Summary of Points in Law in Chapter 2

(1) The test for proof of residence should be ordinary indicia of residence or absence thereof.

---

[7] Independent School District No. 1 v. Bordewyk (1932) 241 N. W. 619.

[8] El Reno Board of Education v. Hobbs, 80 O. K. 293, 56 P. 1052.

(2) Arrangements for the care of children must be judged by the visual facts, not by the possible secret mental intentions.

(3) Persons may not become residents upon moving to a district for merely educational advantages.

(4) Each case must be determined by its merits.

(5) Residence for school purposes does not have to be a legal domicile.

(6) Guardianship to be valid must be permanent and parental.

(7) To change domiciles two points are necessary: First, residence in a new location. Second, the intention to stay there.

(8) The more tangible domiciliary acts have the greater value in determining the true domicile.

(9) Domicile in a federal territory does not establish residence for school purposes.

(10) State employees moving for other purposes than for educational facilities can establish residence for school purposes.

(11) Children have school residence in a district may remain tuition free under conditions 2 and 6, in case the parents move.

## CHAPTER 3

## RESIDENCE OF HOMELESS CHILDREN

Homeless children are not necessarily orphans. By homeless children is meant those whose domiciles are not with their parents. This does not indicate that both of the parents are necessary to maintain the home. Either parent may maintain and keep the home. In fact, residence for school purposes can be maintained in one district and residence in another district. Children deprived of a home with their parents are entitled to a free education as well as those living with parents. The homeless children are a responsibility of the state just as much as those in their own established homes. The purpose of the state in education is to furnish a free education to all resident children of the state. It is evident, then, that homeless children that can establish residence are just as entitled to a free education as other resident children. The purpose of this chapter shall be to show how such residence has been established. In no case was it found that homeless children were held to be without residence. The residence was not necessarily in the district where the children were, but residence was established some place and some one was made responsible for their education.

As in all cases of residence, each case had to stand on its own merits. In general, it might be said that those children of school age, not confined to an institution of

correction, normal in other respects, eligible under the state laws as to age, etc., and able to establish residence. were entitled to a free education. The possible exception were those orphans placed in homes that included in their purpose the education of the children in the home. This was especially true where money was provided for that purpose. The length of the residence in the district was found to have no bearing on the case; the residence did not have to be continuous, such as during vacations. If the residence was established in good faith and not with the purpose only of securing an education in the district, the guardianship permanent and parental, the residence was valid. In short, each case must be determined on its merits.

The Individual Merits of the Case. The legislature of no state has tried to set up a rigid standard of rules to determine residence. The laws to be followed are general principles established for the purpose of guidance. The angles of each case are different on some details. While they can be, and are, the same in general, no fast and hard rule can be followed entirely. To do so would many times cause an injustice to be worked. The general principles must be set up and each case decided on its own merits. For example, the law may read that upon moving to a district the father must work there to establish residence. It is entirely possible that upon arrival the job may not be had for a number of reasons. According to a strict interpretation

of the rule, the father would not be able to establish residence. Basing the case on its merits, the point that would count would be the intentions of the father upon moving to the district. While we have drawn the example from a case of a child with a father, the principle is the same for all cases. Another point in determining a case on its merits is that the evidence should be accepted as presented with no evidence to the contrary. That is, the witnesses may be assumed to be telling the truth when giving evidence. There should be no speculation as to their secret mental intentions.

Secret Mental Intentions. Evidence of witnesses may be taken at its face value unless there is evidence to the contrary. When a witness says that a child has been placed with him and that he is to have full control over the child and to continue to have it, it may be assumed that is just the purpose the child has been placed with him. If it is maintained by a parent that he can no longer support a child and that the child has been placed with a family to provide a home, it must be accepted that that was the reason for placing the child there. The fact that the child is placed in the school, that the school is better than his former residence, cannot be interpreted to mean that the secret reason for the change was to take advantage of educational facilities, and in so doing escape paying tuition. The guardianship is parental and permanent if that is the

stated fact in the case.

Permanent and Parental Guardianship. Where homeless children are placed in either homes or institutions it must be shown that the relations are permenent and parental. By permanent, not any set time is meant. The time may be for a month, a year or more. The point is that a certain time limit is not set. If the control is only while actually staying at the place, such as during the school year or until a certain age is reached, the control is not considered permanent. The parental relation must be the same as that of a parent. The guardianship must mean that they are responsible for the well being of the child, that they must be willing tofeed, clothe and educate the child. To establish this point, the support need not necessarily be one hundred per cent.

A New York case[1] in 1908 establishes these points. An orphan boy by the name of Wisebauer was placed in a private home by a children's aid society of Brooklyn. This society paid a regular sum to the family for his board and also an additional sum for his clothing. The boy was treated just as a member of the family. No arrangements were made as to how long he was to stay with the family. When the boy wished to attend school, the School Board refused him free tuition as they held that he was not a resident of

[1]People v. ex rel Brooklyn Childrens' Aid Society (1908) 109 NYS 403.

the society's district.

The court held that the boy was as much a member of the Place family as he could be of any family. Mrs. Place stood in parental relation to the boy. She had complete control over him at all times. The boy had not been placed in the Place family for the sole purpose of getting an education but for the purpose of having a home. The residence of Mrs. Place was not questioned. Her relation to the boy was permanent and parental. Therefore, the boy was entitled to free tuition. The fact remains, however, that guardianship is not always permenent and parental, but may be penal and temporary.

Penal and Temporary Guardianship. Incorrigibles committed to guardianship of a person does not quality them for residency in a school district. In the case of Black v. Graham[2], an incorrigible boy was committed to the guardianship of a resident of a school district in Pennsylvania. The guardian wished to send him to the school in the district but the School Board denied the boy admission on the grounds that he was not a resident. The guardian held that as he, the guardian, had residence, and the boy being under his care and control, residence was established. The court ruled, in this case, that the relation between the boy and his guardian was penal and temporary, not permanent and parental. The purpose in this case was not to merely give

[2]Black v. Graham, 238 Pa. 381, 86 A. 266.

the boy an education but also to help him in other respects as well. This fact, although true, did not make the relationship permanent and parental which was necessary to establish residence.

In order to establish residence, it is not necessary to have a guardian at all. Children that have been emancipated may establish their own residence if they are of school age and otherwise eligible.

Residence of Emancipated Children. By emancipation is meant those children who are free of any parental control, making their own living, and are looking out for their own interests successfully. It is evident that children capable of taking care of themselves should be given an opportunity for an education. As they have no one to establish their residence for them, it is necessary for them to establish it themselves. That they may do this has been established by the Supreme Court of Wisconsin.

In the case of Kidd v. Joint School District No. 2[3], a boy living in Wisconsin, living by himself, was denied free admission to the public schools of the city he was living in on the gounds that he was not a resident. The boy had no relatives in the district. No institution of any kind contributed to his support. The boy worked and paid for his board and room in the district. The court held that a child emancipated and earning his own living was a resident of the

[3]Kidd v. Joint School District No. 2, 144 Wisc. 35, 316 NW 499.

district and therefore entitled to attend the public schools without the payment of tuition.

Residence of Children in Charitable Homes in General. School districts are charged by the state by law to provide free schools for all residents of school age residing in the district. The question then whether or not the children in charitable institutions are entitled to a free education would be determined on the point of the children having residence for school purposes in the school district.

Generally speaking, the institution is the residence of the children living in them. They have no other home or place of domicile. The institution stands in parental relation to the children in the institution. This being the case, the children in such homes are entitled to a free education from the schools of that district, that is, the district in which the home is located. Following the same reasoning in the parental relationship the education is free only in the resident district. The institution cannot send its children to a school outside of the home district and expect a free education.

The fact that an institution does not pay taxes has no bearing on the case of residency. In fact, very few homes of this type do pay taxes. The fact that the attendance of the children of the home might work a hardship on the local district has no bearing on the case. It can easily be seen that the attendance of a large number of pupils from a home

could crowd a school beyond its capacity and prove to be a drain on the finances of the district. In Michigan, this is guarded against. There, the superintendent of public instruction has the power to limit the number.[4] The law on the residency would be the same, however.

Residency in Homes Established for the Purpose of Education. Some institutions are formed for the purpose of caring, supporting and educating homeless children. Usually in such cases, money is provided for that purpose. It was found in Mississippi that children in such institutions were non-residents for educational purposes and that the home would have to pay the tuition to the local school or provide its own educational facilities.

A home in Mississippi[5] was founded for the purpose to support, care and educate homeless boys. Two boys from this home of school age were sent to the public school in the district where the home was located. The boys were refused admittance on the gounds that they were non-residents of the school district, also that the home did not pay taxes and so were not members of the district. The court held that the boys were non-residents of the district for school purposes. The school had been founded partly for the purpose of educating its inmates. The children had not

---

[4] Child Welfare Society of Flint v. Kennedy School District (1933) 220 Mich. 290, 189 N. W. 1002.

[5] Lake Farm v. District Board of Education, District No. 2 (1914) 179 Miss. 171. 146 N. W. 115.

been brought in for the sole purpose of having a home, but for education as well. Money had been provided for that purpose and they were well able to pay for an education. Even if they would have been without funds, their children would have been non-residents. The fact that the institution paid not taxes had no bearing on the case.

Residence of Homeless Children for School Purposes. In the Supreme Court cases examined, it was found that the courts based their decisions on residents for school purposes upon the same general principles that were used to determine the residence for school purposes of children with parents. When a child is placed in a charitable institution it is assumed that they have no other residence or domicile. Children in such institutions are under the control and care of the institution and usually the time that they will be there is indefinite. Under ordinary conditions, the children remain in such homes until they can care for themselves or until the responsibility is shifted to some other person or persons. The very same conditions may be said to exist in a home with parents. It is not expected that the children in a home are going to stay there indefinitely. Even though they should, the responsibility of the school district is limited. When children reach a certain age, whether in a home or an institution, the district is charged with providing a free education only up to a certain point. With these points established, the residence of

children for school purposes is established the same way, on the same points, whether in homes, with their parents, or in charitable homes, with the exceptions stated earlier.

Two Supreme Court cases from the states of Illinois and West Virginia, illustrate the points in mind. Both cases are recent ones and undoubtedly would be followed by court decisions in other states.

In the case of the Grand Lodge v. Elkins[6], a home for children made a contract with a local school district to pay a part of the cost of sending its children to the local school. They agreed to continue to pay this sum even if the home was taken into the school district upon the vote of the people. The people did later vote to take the home into the district, whereupon the Grand Lodge decided to discontinue the payment of the tuition.

The Board held that the Lodge was liable on two counts, first, the contract with the Lodge, and second, the fact that the children of the home were non-residents. The last point was based upon the assumption that the children were in the home temporarily and so were not residents.

On the first count, the court held that the contract was void, as residents did not have to pay tuition. The fact that the children were not in the home for any set time

---

[6] Grand Lodge I. O. O. F. of West Virginia v. Board of Education, Ind. School District of Elkins. (1922) 90 W. Va. 8, 110 SE 440.

did not make them non-residents. They were residents on the following points: the relation between the home and the children was permanent and parental, and the children had not been brought into the district merely for educational purposes, but to provide a home for them.

The Illinois case[7], a teacher of a County school was instructed by her Board to refuse admittance to orphans from an orphanage in the County without the payment of tuition. The refusal was made because they held the orphans to be without residence. The Court held to the same line of reasoning as the one in West Virginia, namely, the children had not been brought into the district for the purpose of education, and the home was the only residence that the children had. In 1916, the Supreme Court of Illinois gave a similar decision in the case of Ashley v. Board of Education (1916) 275 Ill., 274, 114 NE 20. With these two cases following each other, the point in law in the State of Illinois was well established.

The mere presence or residence in a charitable home does not necessarily establish residency in that district. If they are placed there by another district and supported by that district, they are held to be residents of the supporting district.

Paupers in Charitable Homes. Persons, because they

---

[7]Logson v. Jones (1924) 311 Ill. 425, 143 NE 56.

are paupers, must be supported from means other than their own. Paupers of school age from a home district must be supported and furnished a free education by that district. Paupers from another district are the liabilities of that district. In the case of the Sheldon Poor House v. Town of Sheldon[8], the paupers of a district including those of a school age were placed in the poor house of Sheldon. The Poor House sent those of school age to the city schools where they were denied admittance. The Court held that they were residents of the district that supported them and charged that district with the responsibility of educating them.

Licensed and Non-licensed Institutions. Homes for neglected of delinquent children, but not licensed by the state, as such, do not have the same standing as orphanages so licensed. Such homes are usually privately run and are not financed by public money. In such homes, the children are not entitled to free tuition, while those in licensed homes are. They may be in a district for the same reason as children in licensed homes, but the district is not liable for their education.

The same is true of children placed in boarding homes. Here, the educational angle can plainly enter in. The boarding homes are very likely to be placed in such places

[8]Sheldon Poor House v. Town of Sheldon (1900) 72 Vt. 136, 47 A 542.

to take advantage of good educational facilities. Those who can afford such service for their children are apt to bear in mind the educational advantages of a home in choosing one.

The charitable homes that have been dealt with have been of the licensed type. A case illustrating the home without a license is that of the Child Welfare Society of Flint v. Kennedy School District.[9] In this case, a home was organized to care for delinquent or neglected children, but was not entitled to a license. When the children from this home were sent to the school, they were refused admittance because of non-residence. In this case, the Court ruled that the children in a licensed home were residents of the district in which the home was located and so were entitled to free tuition. Those in non-licensed homes were not residents of the district, as such homes were in reality boarding homes. The relationship was not permanent and parental. In view of such facts, the children of non-licensed homes are not entitled to free tuition.

The boarding house angle is explained by the case of Mansfeild Board of Education v. State Board of Education.[10] Miss Lillian Baysdorf lived in Miss Towner's boarding house and expected to continue to live there. Her father lived in New York and supported her. Lillian applied for

---

[9] Child Welfare Society of Flint v. Kennedy School District (1932) 220 Mich. 290, 189 NW 1002.

[10] Mansfeild Board of Education v. State Board of Education. (1925) 101 N. J. 474 129 A 765.

admission in the Hackett town school, the tuition to be paid by the Mansfeild district where Miss Towner was a qualified resident. The court ruled that Lillian was not a resident, as she had been brought in by a non-resident for advantages of education. The relationship between Miss Towner and Lillian was not permanent or parental. The father continued to have control and could remove the girl at any time. He had also chosen the home with an education for his daughter in mind. The last fact disqualified her on the gwounds that she had been brought in for educational purposes.

Residence of Children With Other than Their Parents. The residence of children not living with either parent or in any charitable institution, or supported by their parents, has been well established. The Supreme Courts of Missouri, Kentucky, Illinois, New York, and Iowa, covering a period of time from 1903 to 1932 have all handed down decisions in harmony with each other. The cases were based on the same points in law as were other cases on residence. That is, the cases were considered upon the individual merits of each case. It was assumed that the witnesses were not hiding any secret mental intentions. The actual appearance of the case, such as living with a relative, and to all appearances a member of the family, plus the testimony counted heavily. The purpose of these cases was to prove residence in the families of the persons with whom children were living.

The Missouri courts have held that where it is the policy of the state to furnish free public schools for all children of school age the statutes relating to schools should be liberally construed.[11] In this case of Halbert v. Clymer, the father of the child made an oral agreement with his own father to let him have the grandchild and care for him. At times, the child would visit his father for a short time. Also, he would visit different places in the country such as any child with the opportunity might do. The father contributed nothing to the support of his son, the grandfather assuming all care. In deciding that the boy was a resident, the court ruled that for all purposes, the boy was a member of the grandfather's family. As his grandfather's residence was not questioned, the boy's residence was established. The Court held that the State Statutes being liberally constructed, the boy was for all practical purposes a resident of the district, although his domicile might still be with his father. It has already been pointed out in Chapter Two that it is possible to have a residence for school purposes, even though the domicile is elsewhere.

The same point on residence is also illustrated by the Stanford School District v. Powell.[12] Here, the mother

---

[11] State ex rel Halbert v. Clymer (1912) 164 Mo. App 671, 147 SW 1119.

[12] Stanford School District v. Powell (1911) 145 Ky. 95, 140 SW 67.

of a five year old girl died. Her father was a day laborer and was unable to support or provide a home for her. This being the case, he gave her up to his sister, who promised to care and provide for the girl. When old enough, the girl applied for admittance to the public school but was denied admittance as a non-resident. The court held that the girl's home was with her aunt and so was entitled to the school privileges of the district in which her aunt was a resident.

Both of these cases also contain the point that they did not live in the district merely for the purpose of attending school but made their homes there.[13] Both cases have the point of the relationship being permanent and parental.[14] The eligibility of a child for the privileges of a school district is not restricted to the domicile of the parent, but the actual residence of the child. A North Dakota case brings this point out clearly.[15] A mother deserted by her husband placed her daughter with a sister. The mother moved out of the state to South Dakota and lived and worked there. The daughter remained with her aunt. During vacations she often went to her grandmother's where she would work, but always returned to her aunt.

The North Dakota statutes state "that schools of

---

[13] Grand Lodge v. Board of Education of Elkins (1922) 90 W. Va. 8.

[14] People v. Hendrickson (1908) 109 NYS 403.

[15] Anderson v. Breithearth (1932) 245 NW 483

the state shall at all times be equally free, open and accessible to all children over six and under twenty-one years of age, residing in the district". The court held that the residence of the child is not restricted to the domicile of the parent but in a broader sense, means the actual residence of the child.

When a child is taken into a home to be cared for in good faith, the right to attend public school does not depend upon the legal residence of the child, but whether or not they are a resident of the district in which they wish to attend school.[16]

The son of William Saxe resided outside the boundaries of School District No. 36. His son stayed with his grandmother, who lived in District No. 36. The grandmother was to care for him and educate him at her own expense. The father evidently was able to support the boy. It was held by the Board the arrangement was made merely to avoid payment of tuition. The court held that the arrangement was made in good faith, in which case the residency of the boy was established in District No. 36. The point that the secret mental intentions should not be considered was used in this case.

Temporary Residence. Temporary residence in a

---

[16] People v. School District No. 36 (1917) 206 Ill. App 381.

school district is not sufficient to establish residence for school purposes. The residence is considered temporary even though the stay is of some length. In the case of Winchester v. Foster,[17] Foster is a resident and tax payer in the city of Winchester and brought suit to permit his niece to attend the city schools of Winchester without the payment of tuition. Foster had agreed to support, clothe and maintain his niece until she was twenty-one years of age. The girl was for several years under twenty-one, so the arrangement would last for some time, but the point in law is that it was not permanent.

The Court found that the girl was not a bona fide resident. The uncle was not her guardian, she was not apprenticed to him and he had no control over her. He was only responsible while the girl was with the family. The relation was not permanent and parental.

Minors may have residence for school purposes other than the domicile of their parents. The test for such residence is not the same as that for suffrage.[18] The test is whether the arrangement has been made in good faith, if the child has been brought in for educational purposes, and if the relationship is permanent and parental.

---

[17] Board of Education of Winchester v. Foster (1903) 116 KY.484, 76 SW345

[18] Mt. Hope School District v. Hendrickson (1916) 197 Iowa 191, 197NW47

Summary of Points in Law of Chapter 3

(1) Each case must be determined on its individual merits.

(2) A child emancipated and earning its own living is entitled to residence.

(3) Children living in licensed homes are residents of the district the home is located in.

(4) Children living in homes that have as part of their purpose to educate the children are not residents.

(5) Children living in homes that are not licensed are not residents.

(6) The fact that an orphanage pays or does not pay taxes has no bearing on the case.

(7) Children placed in boarding homes for the purpose of taking advantage of educational facilities are not residents.

(8) The length of the residence in a district has no bearing on the case.

(9) The statutes relating to free public schools should be liberally construed.

(10) Guardianship to be valid must be permanent and parental.

(11) Arrangements for the care of children must be judged by the visual facts and not by the possible secret mental intentions.

(12) Guardianship that is penal and temporary is not parental and permanent.

(13) Children may have residence other than with their parents for school purposes.

(14) The test for school privileges is not the same as for the right of suffrage.

# CHAPTER 4

## TUITION AND THE RESIDENT STUDENT

The constitutions of most of the states declare that the public schools of the state shall be free. The phrase has not been interpreted the same in all states. Some states furnish transportation to the school and some furnish the books that are used. In general, it may be said that the more recent a state has been admitted to the Union the more liberal are its school laws.

All of the courts of the state reports examined agreed that tuition or the charge for instruction should be free. At first this only applied to the eight grades, but with the universal acceptance of the high school, it also has been included in the scope of the free public school.

The courts of Alabama in 1931 allowed a four dollar matriculation fee to be charged. The constitution of Alabama reads that the public schools shall provide liberal public schools, so the courts held the school boards were within their rights in charging this fee. The four dollar fee in Lincoln was evidently held to be reasonable, for in 1910 the same court ruled that there was a well defined distinction between tuition and an incidental fee, and in 1919 they ruled that such fees could be charged but that they must be reasonable. Reasonable in this case was twenty-five cents a month.

The Incidental Fee. By the incidental fee is meant

that charge for such items as wood and water for the school building to assure the comfort of the children. A rule in force was that the children of indigent were exempt.

The courts have made a distinction between tuition and the incidental fee for such purposes as heating, lighting, etc. This fact has been recognized by the Supreme Court of Alabama. In 1910, the Supreme Court of Alabama held that a charge of twenty-five cents a month for wood and water was permissible by the County Board. The daughter of Bryant[1] was refused instruction as she refused to pay this fee. The court held that the fee was reasonable, within the power of the Board, her father was well able to pay, so the fee could be made a condition for admission to the school. Had her father been indigent, she would have been excused.

Although incidental fees in Alabama are permissible, the fee must be reasonable.[2] The School Board of Coal City made assessment against the pupils for amounts ranging from fifty cents, seventy-five cents and one dollar, depending on the grade the child was in. The payments were made the condition for admittance to the school. It was found that a fee of twenty-five cents was sufficient for the items allowed by law; that is, for wood, water, etc. The balance, if any, was to be used to augment the teachers' salaries. In view of the fact that a fee of twenty-five cents was

[1]Bryant v. Whisenant (1910)167 Ala. 325, 52 So 525.
[2]Roberson v. Oliver (1919) 189 Ala. 428, 66 So 695.

deemed sufficient for the incidentals, it would appear that the teacher's salary was kept in mind when the rate was set. Using a part of the incidental fee for the teacher's salary made the fee in reality a tuition payment. The School Board has power to charge a reasonable amount for incidental fees. The amount charged in this case was more than necessary for these incidentals. This, coupled with the fact that part of the fee was to be used for tuition, made the charge illegal. The School Board's plea that the money received from the District was not sufficient to run the school, while true, could have no weight in the Court's decision. The fee had to be reasonable, which it was not, the only point of interest to the Court.

In a similar case[3], the School Board authorized the teacher to collect a one dollar fee per pupil per month. The Court ruled, as in the other case, that a twenty-five cents fee was sufficient for the incidentals. The School Board had over-stepped its authority in allowing the teacher to collect the dollar fee. Admittedly, the salary was low and the Board was without resources to supplement the pay in any other way. The school would still have to be conducted according to law and the statutes.

Special Fees. While tuition could not be charged in Kentucky, it was felt that for subjects not included in the

---

[3]Hughes v. Outlaw (1916) 197 Ala. 452, 73 So 16.

regular course of study a special fee could be charged.[4] The subjects were to be taught during the regular school time and credit would be given. The Courts ruled that the School Board was within its rights in authorizing the teacher to charge for this additional service.

Schools, Part Time Private, Part Time Public. Tuition is a charge for instruction. Schools that charge tuition or a fee for instruction cannot be called free schools. In the free public school, the payment of tuition falls on the public in the form of taxes. When this charge is met in part by the public, the school must be classified as a free public school. That is, a school cannot be for a part of the year a public school and a private school for the remainder of the time.

In some states the support of the public schools has not been strong. All of the states have, at different times, experienced difficulty in properly financing their schools because of economic conditions. At different times the School Boards, often with the consent of the patrons, have attempted to remedy the lack of support by regulations of their own or by their own interpretation of the existing statutes. The constitutionality of laws passed for the express purpose of charging tuition will not be dealt with here, but the court cases on the attempts of School Boards to take the initiative will be given.

[4]Major v. Cayce (1895) 98 Ky. 357, 33 SW 93.

There were attempts to run the schools as part time public schools and part time private schools. Some felt that the approval of a majority of the patrons could authorize the Board to charge tuition. While it is true that a school may operate on money from private sources as well as from public, it would not alter the fact that the school was still a public school and tuition free. If all patrons were of the same mind and all willing to pay a tuition fee, a school would be run as a combination public and private school, but such common consent would not make it a legal school. Any one person could bring suit against such a school if denied free admission and would be supported by the courts. The only way such a school could legally continue, would be for the patrons so minded to make voluntary contributions and allow those not so minded to attend free. There is nothing to prevent an individual from giving money to the school in addition to the tax he pays if he wishes to do so, but the point is that no child eligible under the state laws could be excluded from a school supported in such a manner, or admission be conditioned upon the payment of tuition.

The point is illustrated by the case of Brinson v. Jackson.[5] The patrons of this school district demanded a nine month school but there were funds sufficient only to maintain the school for six months. The plan formulated was

[5] Brinson v. Jackson (1929) 168 Ga. 353, 148 SE 96.

to charge a six dollar matriculation fee for the months of September, October and May. The fee was made a condition for admittance to the school. The plaintiffs asked for an injunction to prevent the defendant from denying admittance to the school.

The school was maintained in part by funds provided by the Act of August 18, 1919 (Act 1919, p. 387). This fact stopped the defendants from denying that the school was subject to the constitutional provision making the school free to the children of the state.

Earlier in the same state a similar plan had been tried. The plan was to run the school as a public school for six months, and the other thre as a private school.[6] During these three months, the trustees would have nothing to do with the school, no tax money was to be used during this period, the same staff of teachers would continue, and the school would be held in the regular school building. The decision handed down by the Supreme Court of Georgia was that "a school whose existence depends upon antecedent action by the school officers and which could not be taught except by the use of a school house exclusively by law for the purpose of education must be considered a public school and a fee cannot be charged". If the school had been in some rented hall and none of the public school equipment used, it would have been

---

[6] Claxton v. Stanford (1925) 160 Ga. 752, 188 SE 881.

perfectly legal.

Interpretation of Management and Control. Management and control cannot be construed to give any powers beyond their ordinary meaning, nor include the right to charge tuition.[7] In a School District in South Carolina, additional money was needed to run the school properly. The trustees decided they had the power to charge tuition as the State Act of 1896, section 32, gave them the power to manage and control the School District. The Court held that the right to manage and control the district did not include the right to charge tuition. Charging tuition did not come under ordinary meaning of the phrase, and they had no power to interpret the Act in that way.

Granting of Credits as Condition for Payment of Tuition. A School District that had made the payment of tuition the condition for the admittance to the school had permitted a girl to enter on condition that the tuition be paid later.[8] The girl the next year transferred to a different school and asked that her credits be transferred to the new school. The transfer was denied as she had not paid the tuition demanded in the first school. The Court held that the credits could not be withheld as the tuition charged was illegal.

Postgraduate Students. The liability of the School

---

[7] Young v. Trustees of Fountain Inn Graded School (1897) 64 SC 131, 41 SE 834.

[8] Roberts v. Wilson (1927) 297 SW 419.

District ends when the four year high school course has been finished.[9] The children in this case had completed a four year course in an approved school. The father then sent them to a different school for additional courses and asked his district, which did not maintain a high school, to pay the tuition. The father held that as long as the home district did not maintain a high school in the district, they were liable for high school subjects taken elsewhere. The ruling was that the district is only liable until a four year course has been completed, and not as long as some one may wish to go.

The same ruling is applied to students who have finished a prescribed course and wish to return for additional work. The Board is within its rights in such cases to charge tuition, but it is not mandatory.

Private and Sectarian Schools. The high school of today is of comparatively recent development. Before its development, secondary education was in a large measure taken care of by the academy. These academies were private schools organized by individuals or in many cases, by churches. The difference between a private school and a sectarian one is that a private school is very similar to a public one except that it is owned and controlled by private individuals. The sectarian school is owned and controlled by a church,

---

[9] New Hampton Institution v. Northwood School District (1907) 68 A 538.

with the instruction of religion playing an important part.

Before the development of the high school, it was customary for the school districts to make arrangements with the academies in the district to send their high school students to the academies for the school work. Where there is not a state statute to the contrary, this may still be done.

Some states have laws limiting the legal arrangements that school districts may make with non-public schools. In South Dakota such a law exists.[10] The Pleasant Vale School District No. 53 discontinued its school. According to the law, they made provisions for the children to attend school elsewhere. Hlebanja sent his children to St. Martin's Academy, a sectarian school in Rapid City. The Board agreed to pay the tuition, but the Chairman, Mr. Brewer, refused to sign the warrant. The Chairman was upheld by the Court. Under section 7485and section 7490 (Rev. Code 1919), legal arrangements could not be made with any non-public school. St. Martin's was not a public school, so arrangements for the payment of tuition from Hlebanja's school district could not be made.

Private schools that accept public funds are classified as public schools. The revenue that an academy receives comes mainly from the tuition charged, a right they have. However, if the academy accepts public funds for a

[10]Hlebanja v. Brewer (1931) 236 NW 296.

"common school department" it comes under the common school laws.[11] In the case of Wilson v. Stanford, the Union Baptist Institute accepted public money for a common school department. The patrons of the school district held that they did not have to pay the matriculation fee because of this. The Court ruled that a private school accepting public money would come under the public school laws of the state, and as such, could not charge tuition to the residents of the district. If the money received was not sufficient, they could refuse to make such arrangements.

Model Schools. The model schools referred to in this study are those schools that are connected with the State Universities, Teachers Colleges, and Normal Schools. The purpose of these schools is to provide a practical training for the teachers being trained in the state schools.

The state schools of higher learning are almost always located in cities that maintain schools of their own. Some of the students may come from the outlying districts and the tuition is paid by these districts according to law. The dispute is not over these children, but those from the city district.

The majority of the students of the model schools have been from the school district of the local schools. The question is, whether or not the model school may charge the local school district tuition for the students attending the

[11] Wilson v. Stanford (1909) 133 Ga.483, 66 SE 258.

model school.

The school districts have maintained that they have already established a school that renders the service required by law. It is not necessary for the students to attend the model school, as the school district has established qualified schools in the district. It is permissible for the children of the district to attend the model school, but if they do, no tuition should be charged. In fact, tuition cannot be charged, as the model school is a public school established by the state. The state is charged by law with providing a free education for all children of school age. Therefore, this state school for those of school age should be free.

It has been held that for a school to be free, it must be under the direction and control of officers established for that purpose.[12] The city schools are under the control of the Board of Education created by the state for that purpose, and so are charged with providing a free education for the children of school age in the district. On the other hand, the model school is under the control of the officials of the college, which is not a free public school.

In North Dakota, a law was passed to permit model schools to charge tuition for students in attendance. The Court held the law to be constitutional. The Court main-

[12] State Teachers College v. Morris (1933) 144 SO 374.

tained that the city school district received benefits from the model school even though they maintained their own schools. It was possible for them to properly maintain their schools with fewer teachers, removed the possibility of having to build new schools, etc. The legislature was within its power when it charged a reasonable rate for the facilities afforded the pupils of the special school district.[13]

Any redress the special school district might have would not be with the courts, they would have to go to the legislature and remedy the situation by law.[14]

Summary of Points in Law of Chapter 4

(1) In some states an incidental fee for heating and lighting may be charged, but the fee must be reasonable.

(2) The right to control and regulate the district does not include the right to charge tuition.

(3) The consent of the majority of patrons in a district does not legalize the charging of tuition.

(4) Tuition may be charged for subjects not in the regular course of study.

(5) Tuition is only free until the four year high school course has been completed.

(6) Schools conducted in public school buildings are

---

[13] State v. Valley City Special School District (1919) 42 ND 464, 173 NW 750.

[14] Ibid

free schools.

(7) Schools cannot be conducted as part time free schools and part time private schools.

(8) Credits cannot be withheld upon the non-payment of tuition.

(9) Private schools accepting public funds are classified as public schools.

(10) In some states, such as South Dakota, legal arrangements cannot be made with non-public schools.

(11) Model schools may charge tuition for children attending from local school districts.

# CHAPTER 5

## TUITION AND NON-RESIDENT STUDENTS

The school districts of a state are bound by law to provide a free education for all children of school age, otherwise eligible, who are residents of the school district. This does not mean that each school district must provide the physical equipment to furnish such an education. If such equipment is not furnished, the law requires that some arrangement must be made to furnish the education required by law.

The usual arrangement, in case the local district does not provide facilities, is to arrange with some other district to educate the children, paying tuition for such services. It has been well established that a district is not liable for the education of a child from another district, they are responsible only for the children of their own district. Children attending from another district must pay tuition. By this, it is not meant that the children or their parents must pay, but that the district charged with the responsibility of the education must. In some states, the tuition is paid by the state, at least in part.

Liability of Districts for Tuition. The fact that a district has never maintained or authorized a high school does not mean that their obligation ends there. High schools are now considered a part of the free public school system.

The very fact that a district does not maintain a

high school is sufficient reason to attend a high school elsewhere.[1] The state law in this case imposed a quasi contract or obligation upon the School District. Edna Simonson had finished the eighth grade in her home district and then attended high school in Yankton. She wished to collect tuition from her district, as they did not maintain a high school. The district did not allow the payment as they held they were not liable, as a high school had never been authorized in the district. Edna, to attend a high school, which was her right, had to attend elsewhere; the proper procedure had been followed in applying for tuition, so the district was liable.

The obligation of a school district to provide education implies that the education must be provided when the eligible children are ready for it. Educational facilities, for example, cannot be denied the children until the home district is ready to provide them. In the case of Fisk v. Huntington[2], Fisk had followed the proper procedure in applying for tuition for his children. Huntington, having no high school of their own, was required to make some arrangement for such an education. The request for tuition was apparently refused for no other reason than that the next year Huntington would have their own high school. They felt that the children of Fisk could wait a year to continue their

---

[1] Board of Education of the City of Yankton, School District No. 19 (1909) 23 S. D. 439, 122 NW 411.

[2] Fisk v. Inhabitants of the Town of Huntington, 179 Miss. 571, 61 NE 260.

education. The fact that the school district refused the request for tuition that had been made with the proper procedure made the school district liable. "The failure of a town to grant a proper request is sufficient refusal to render the town liable for tuition. The law is constitutional so long as the money is expended by the authorities of the town or city in which the money is to be expended."

Generally speaking, children are given the option of attending the most convenient school. Distance by the main traveled roads being the criteria by which this point is established. This is not always the point, however, where the case is that of whether or not a home district offers a four year high school. In the case of Stuart v. Carter,[3] Carter sent his children to a high school in Stuart, which was two miles away. Carter paid the tuition one year, but after that expected his district to pay the tuition under the statutes of Chapter 146 of the 34th, General assembly, which states that a district not offering a four year high school, should pay the tuition.

The home district did not maintain a high school, but a County high school was organized in the county where the district was located. It was held that, although the Guthrie County High School was thirteen miles away, it made the Long Branch District a school corporation offering a four

[3]Board of Education, Dist. No. 7 v. School Dist. No. 66 (1914) 201 Ill. App. 429.

year high school course and so was not liable for the tuition.

Voice of the Home District on Transfer of Districts. Although districts are liable for tuition where they do not provide the necessary facilities, it does not mean that they have no voice in the matter of tuition payment. The districts must be asked, and approve the transaction. Refusal, as has been seen, may make them liable, but at least they must be consulted on the matter. In the case of the Board of Education, District No. 7 v. School District No. 66,[4] the parents of five children of District Seven consulted the Directors of District 66 about their children attending school in District 66. The transaction was agreed to, but the Directors of No. 7 were not informed. The tuition could not be recovered as the home directors had not been asked to approve the school selected by the parents in accordance with Hurd's Rev. St. 1913, Chapter 122, Sec. 470. If the directors had been consulted, the school selected being the logical one, the refusal of the Directors of District No. 7 would not have released them from their liability.

The last point mentioned is further illustrated by the case of Hardwick v. Wolcott.[5] The pupils of Wolcott, the home district, were attending school in Hardwick. One day a director of Hardwick met a director from Wolcott and told

---

[4] Board of Education No. 7 v. School Dist. No. 66 (1914) 201 Ill. App. 439.

[5] Town Dist. of Hardwick v. Town Dist. of Wolcott, (1905) 78 Vt. 23, 61 A. 471.

him that they could no longer educate the children of the Wolcott district at the same tuition. Nothing more was done and the children continued in the Hardwick school with the knowledge of the Wolcott directors. The Hardwick directors relied upon this knowledge, and the information given them, to collect the tuition. The Wolcott District was held for the tuition. They had been approached for their approval, had failed to designate a different school and allowed the continued attendance of the children. Here the negative action was sufficient to cause their liability.

Demanding Tuition. The word, demand, in the laws governing tuition have been held to mean "to make application".[6] The tuition cannot be forced under any conditions, but the regular procedure must be followed. In this case, the children of Mrs. Riley, residing in Clarendon, wished to go to the Wallingford school, which was more conveniently located. The Clarendon directors argued, stating the money paid should be considered transportation. Later they told Mrs. Riley the practice would have to end. The Town of Wallingford attempted to collect tuition on the gounds of an implied contract, and the knowledge of the Clarendon Board that the children were attending the Wallingford school.

The Clarendon school had acted within their rights in refusing to pay the tuition. To demand tuition meant

---

[6] Town of Wallingford v. Town of Clarendon (1908) 81 Vt. 245, 69 A. 734.

that an application for tuition must be made. The tuition could not be collected after the notice had been sent to Mrs. Riley. In this case, the Clarendon Board had taken action, and being within their rights, the notice was valid.

Similar Courses. The word "similar" has been held to mean to bear resemblance, but not completely identical.[7] The importance of this word is based on the case where a School Board refused to pay tuition in another district as they maintained a similar course. Had the word similar meant having characteristics in common, like in form, size, appearance, quality, and not merely bearing resemblance, the home district would have been compelled to pay the tuition. The County Superintendent had assigned the students to the Ross Township School, but the fact that the home district maintained a "similar" course, exempted them from tuition payments.

Convenience of Schools for Attendance. Districts may have to pay tuition for their resident children in other districts, providing their schools are not more conveniently located. No set rule has been established as to just what makes for a convenient school. In a sparsely settled district, the most convenient may be fifteen miles away. In thickly settled districts, the matter of a few miles may be the deciding point. The rule that is followed in determin-

[7] Board of Education of Ross Township v. Board of Education of Silvercreek Township (1931) 440 Ohio, App. 335, 185, NE 207.

ing the most convenient school is to choose the nearest public route. Factors such as crossing railroad tracks, poor roads, dangerous cross roads, etc., may enter in, but these are factors for the Superintendent of the County to decide. The general rule is the nearest public maintained highway.

A resident of a school district being more conveniently located to a school in another district may have the tuition for his children paid for in that district by the home district.

In the case of Beck v. Lyon[8], Beck lived six and one half miles from the school in the home county, and seven miles from the adjoining county. His sons were sent to the school in the adjoining county of Caldwell. Caldwell sued Beck for tuition of his two sons attending their school. Beck maintained that the liability was that of his home County, Lyons. He gave notice to the Lyons County authorities of his desire to send his sons to the Caldwell school but this plea was denied. He then instituted action to force the payment.

The Lyon County Board had to pay the tuition, as it was held that the Caldwell school was the more convenient, because of conditions of the roads to the Lyons school. However, on the principle of having a voice in the matter, they did not have to pay until after the notice had been given.

---

[8]Beck v. Lyon (1926) 217 Ky. 67, 288 SW 1012.

Amount Tuition District is Liable For. The amount of tuition due a district educating non-resident children differs in different states. Of the cases found and examined there was little uniformity in the decisions. The courts all agreed that the district educating non-resident students should not be expected to pay for extending such services. The difference in the findings was who should pay for such services. The court of the State of Iowa held that the parents could be made to pay the difference between the tuition paid and the instructional costs. The Nebraska court held that where the costs were different, the district could refuse to admit students, but if they did not, extra charge could be made. Oregon and Indiana agreed that the home district should be held liable for the difference in cost.

In the Iowa case,[9] Mabel and Florence Chambers resided in Calhoun Township where no high school was maintained. They attended high school in Missouri Valley and were charged seven dollars tuition. The home district paid eight dollars, making a total tuition of fifteen dollars. The parents objected to paying the seven dollars on the grounds that Chapter 156, Acts of the 37th General Assembly limited the amount that one district could charge another, and also that it prohibited them from charging the parents.

The court held that the State Legislature did not intend that non-resident children should pay less tuition than

---

[9]Chambers v. Everett (1921) 191 Iowa 49, 181 NW 867.

resident children. They felt that school boards would refuse to accept children unless the difference in tuition was equalized. The ruling was that non-resident students could be charged tuition in addition to what their district paid.

The Nebraska case[10] ruled that neither the home district nor the parent or guardian could be charged with the additional tuition. The State Legislature had authorized one dollar and fifty cents weekly tuition to be paid by the home district. Dan Baldwin, from district No. 73, attended school in Hebron and his home district paid the one dollar and fifty cents prescribed in the law. After a time, the Hebron school asked an additional one dollar and fifty cents from Dan Baldwin.

The Court ruled that under certain conditions a school district can refuse admittance to non-resident students, but if they do admit them all they can receive is the one dollar and fifty cents allowed by law.

The Hebron school maintained a standard in excess of that required by the High School Manual and so could not expect other districts to help maintain that standard. On this point, the Nebraska Court seemed to stand alone.

The Indiana Court[11] ruled entirely different on the point as to who should pay the tuition. The Perry school

---

[10] Baldwin v. Dorsey (1922) 108 Nebr. 134, 187 NW 879.

[11] Kerr v. Perry School Township (1904) 162 Ind. 310, 70 NE 246.

operates five months, the Bloomington school operates nine months. The Perry School Board maintained that they were liable to the Bloomington District for five months tuition, which was all the students would have received in the home district. The court ruled "that where a student transfers from one district to another where the term is longer, the tuition payable to the creditor district is not limited by the term of the resident district". Here the court ruling would not penalize a district for maintaining a higher standard than a neighboring district, nor would they be expected to bear a part of the cost for education for non-resident students.

The Oregon Court in 1933, followed the same line of reasoning as did the Indiana court. In the case of Smith v. Barnard[12] the state legislature arbitrarly set the tuition rate to be paid to high school districts by non-resident high school districts. The Eugene High School had a daily attendance of seven hundred. Two hundred and twenty-five of these were non-resident students. The per capita cost per pupil was eighty-nine dollars. For the non-resident students, Eugene received sixty dollars for the first twenty, fifty dollars for the second twenty, and thirty-five dollars for the remainder.

The cost of the high school for educating the two hundred and twenty-five non-resident students amounted to

---

[12] Smith v. Barnard (1933) 21 P 2nd 304

twenty thousand and twenty-five dollars. For this service they received eight thousand, six hundred and seventy-five dollars. In addition to this, the Eugene tax-payer had to contribute a 1.88 mill levy to the fund that the eight thousand, six hundred and seventy-five dollars came from. It cost the City of Eugene over twelve thousand dollars to educate the two hundred and twenty-five non-resident students. The court ruled that the law was unconstitutional as it placed an unequal burden on the taxpayer of Eugene and also deprived the district receiving such students of the due process of law.

Summary of Points in Law of Chapter 5

(1) School districts are liable only for the education of resident students.

(2) The fact that a district has never approved a high school does not relieve them from tuition liability.

(3) A district not offering a four year high school course is liable for tuition.

(4) Educational facilities must be provided when the children are ready for them.

(5) Refusal to grant a permit to attend the school in a different district may render the district liable for tuition.

(6) Convenience in attending school must be considered.

(7) Directors of the home district must be consulted

as to what school shall be attended.

(8) To demand tuition means to make application for tuition.

(9) "Similar courses" are courses alike but not completely identical.

(10) Resident students are not expected to pay more tuition than non-resident students.

(11) Placing the burden of education of non-resident students on the home district is depriving the taxpayers of the home district of due process of law.

# CHAPTER 6

## THE CONSTITUTIONALITY OF TUITION LAWS

In the study of the court cases, it was found that laws permitting one district to educate its children at the expense of another district were not constitutional. It was found that when a state legislature passed a law setting a certain tuition limit that might be paid, the amount many times was not sufficient to pay for the cost of educating the non-resident students. To permit such action would allow an unequal burden of taxation and also deprive the people of the non-resident district of due process of law.

The question of constitutionality of the laws was not whether or not it was constitutional to charge tuition. The right of the state legislature to charge one district for services performed in another district is not questioned. The tuition paid by one district to another is paid by public money and so would not conflict with the theory of a free public school system.

The question involved was the amount of tuition set by the State Legislature. The fact that tuition was charged did not enter into the case. The question was if the amount set by the Legislature was legal, and if the amount would have to be adhered to in case it was not sufficient to cover the costs of the non-resident district.

The courts all agreed that the non-resident district

should not bear the cost of educating the children from another district. They did not all agree, however, as to who should pay the difference. Only the court of one state, that of Iowa, held that the parents could be charged for the difference. One court held that it could not be paid at all, and that the non-resident district would have to refuse admittance to non-resident students, and the rest held that the home district could be charged for the balance.

The court cases to be examined in this chapter will deal with those cases that permit the patrons of a district to be charged tuition.

To be constitutional, laws passed by the state legislatures must be in harmony with the state constitution. In every case but one, it was found that laws allowing the charging of tuition conflicted with the state constitution. Where the legislature is charged with the establishing of a free public school system, tuition may not be charged. The exception was the state of Alabama. The constitution of Alabama establishes a liberal school system which allows the charging of a matriculation fee.

Another point was established in the cases examined. There was some doubt as to whether or not the high school should be included in the public school system. The courts held that the four year high school was a part of the free public school system.

A Liberal Public School System. When a constitution

establishes a free or liberal school system, there is a question as to just what a free or liberal school system is. The final interpretation rests with the State Supreme Court. The Alabama Supreme Court ruled that a liberal school system could not allow the charging of a matriculation fee. Under a free school system, such a fee would not be permissible.

In the case of Vincent v. County Board of Education of Talladega County[1]. Vincent, the father of two children, refused to pay a four dollar matriculation fee in the public schools of Lincoln. He refused to pay on the gnuunds that such a fee, although authorized by the Board, could not be charged in a public school.

The court held that under a constitution that required a liberal school system, details of management, including the charging of such fees may be left to the School Board. The opinion of Justice J. Sayre was as follows: "The argument against the constitutional validity of the section proceeds upon the hypothesis that the constitution establishes a system of free public schools ------- It is quite evident that, if the framers of the constitution had thought to impose upon the legislature the duty to establish a system of free public schools they would have used just that word".

The Supreme Court of Kansas ruled that a common school

[1] Vincent v. County Board of Education of Talladega County (1931) 131 SO 893.

system meant a free school system. It seems doubtful that the Alabama Court would have ruled the same as the Kansas Court in interpreting the word common.

A Common Public School System. In the case of Board of Education of City of Lawrence v. Dick[2], the Board of Education authorized its superintendent to expel all students who refused to pay a tuition fee of two dollars and fifty cents per term. The Board held they had the right to make this charge under the laws of 1889 (Gen. St. 1901, 6305). This bill permitted a city of the second class to operate a high school and maintain it in whole or in part by fees. The citizens objected to this payment as unconstitutional. The Court held that to charge such a fee was unconstitutional as it violated that section of the constitution calling for a common school system. Justice J. Greene's opinion in upholding the decision was as follows: "It must be assumed that the men who wrote the Constitution used the phrase "common schools" in its technical sense, as we find it defined. We think it follows therefore both from authority and reason that the phrase "common schools" was used in the constitution in its technical sense, which means free schools, and that the common schools of Kansas are free".

The Supreme Court of Kansas in ruling on this case, interpreted the word "common" to mean free by following a

[2]Board of Education of the City of Lawrence v. Dick (1904) 70 Kan. 434, 78 P. 812.

liberal construction on school laws. Alabama has always been more conservative on matters pertaining to public education. The Kansas court followed the more liberal feeling of the North and West in its interpretation.

The High School as a Part of the Public School System. As the high school of today has become pupular since many state constitutions have been adopted, it was necessary to establish the principle of the free high school. The public high school by common consent of the people is considered a part of the public school system. The fact that the people of a state give their sanction to making the high school a part of the free public school system would not make it a legal part of the school system. High schools could be maintained in districts that were willing to be taxed for that purpose, but the principle would have to be established by the courts in the absence of any different law on the matter.

In 1919, the State Legislature of Arkansas authorized the School Boards of the state to charge tuition to support their high schools. The School Board of Logan County decided to take advantage of this as they did not possess sufficient funds to support their high school without the special fee. A patron, Mr. Bangs, brought suit to prevent this charge on the gwuunds that such a fee would be unconstitutional[3]

---

[3] Logan County Board of Education v. Bangs (1920) 144 Ark. 34 221 SW 1060.

The court held that the special act was unconstitutional. The common schools included the high school which meant that the high schools had to be free. The fact that the district was without sufficient funds to maintain a high school could not make the law constitutional. If they lacked the funds they had the power to limit the schools to the lower grades.

Exemption of Tuition Payment. Laws to exempt indigent parents are legal but not necessary. The charging of tuition in those states that maintain a free public school system is not legal, regardless of ability to pay or not. In a state such as Alabama, a law exempting indigent parents may be necessary.

In the case of People v. Moore[4] a law had been passed by the legislature exempting the patrons unable to pay but charging the rest. Thirteen children from the Roselawn district were given permission to attend high school in the Danville district. All of the parents except two were able to pay the tuition. The Roselawn School Board paid the tuition for all thirteen children. Later they started action to recover tuition from the eleven that could afford to pay. The action was based on the Act of May 25, 1907 (Laws 1907, p. 523) which stated that tuition shall be free only to those whose parents or guardians cannot afford to pay.

[4]People v. Moore (1909) 240 Ill. 408, 88 NE 979.

The court ruled as the Legislature could only establish free schools and the high schools being a part of the public school system must also be free. If the right of the schools is extended to the pupils of other districts, it would have to be on the same terms to all. Therefore, the special act granting exemptions to some was unconstitutional.

The same ruling was applied in the case of Mercer Union School District v. Coolspring Township where a ruling had been made exempting the children of the Veterans of the Civil War.

Summary of Points in Law of Chapter 6

(1) The State Supreme Courts must decide if tuition may be charged in the public school system of the state.

(2) The high schools are accepted as a part of the public school system.

(3) The exemption of tuition must be made on the same basis to all.

(4) State Legislatures may not pass laws granting the right to charge tuition contrary to their state constitution.

## CONCLUSION

The establishing of a public school system of the United States has been left to the states. No state has neglected its children of school age. It is true that the children are not all equally taken care of; the school laws in all the states are not equally liberal in providing an education; and it is also equally true that all states do not have equal financial ability to provide an education.

The states all recognize the need for a free public school education of its youth in their constitutions. These constitutions are not worded the same nor have they been interpreted the same by the different Supreme Courts of the states. They do, however, all establish a public school system.

Any child of school age in the United States will find educational facilities provided for him at no cost to himself or parents or guardians. To administer a business as huge as the public school system, rules and regulations are necessary. There may be times when enforcing these rules, there may seem to be a miscarriage of justice and some one denied any opportunity for education. When such situations arise, the recourse is the courts of the states and the Supreme Court of the states has been liberal in their construction of the school laws.

The various Supreme Courts of the states have decided that free public schools and common public schools are to

be free schools. Under the state constitutions, the legislatures may not authorize School Boards to charge tuition. The state, through its subdivision, the school district, is held responsible for the education of the children of the school district. In fact, the states go so far as to insist upon children up to a certain age attending school. Only after a certain age has been reached or certain attainments in school standings been made, does the responsibility of the state end.

A problem of the future not touched upon by this study is that problem created by a part of our mobile papulation. Many people today are living in auto-trailers or tourist camps. The education of the children of these people will doubtlessly create a problem that must be met in the near future. How this problem will be met should make an interesting study for some one.

TABLE OF CASES

Christain v. Hopkinsville, (1913) 154 Ky. 309, 157 SW. 697

Columbus v. Fountain Prairie (1908) 134 Wisc. 593, 115 NW 111.

Crosland v. School Dist. No. 40 (1904) 91 Minn. 368, 97 NW 885.

Chambers v. Everett (1921) 191, Iowa 49, 181 NW 867.

Child Welfare Society of Flint v. Kennedy School Dist. (1922) 220 Mich. 290, 189 NW 1002.

Christian Board of Education v. Morris (1925) 207 Ky. 221, 268 SW 1106.

Claxton v. Stanford (1925) 160 Ga. 752, 128 SE 881.

Cook v. Board of Directors of School Dist. No. 80 (1914) 226 Ill. 164, 107 NE 327.

District No. 95 v. Edgar County (1923) 231 Ill. App. 415.

Dahl v. Ind. School Dist. No. 26 (1922) 45 S. D. 366, 187 NW 638.Da

Dallas v. Lowe 235 W. (2nd) 431

El Reno Board of Education v. Hobbs 8 Okla. 293, 58 P 1052.

Fangman v. Meyers (1931) 8 P (2nd) 762.

Fiske v. Inhabitants of Town of Huntington (1901) 179 Miss. 571, 61 NE 260.

Gardner v. Board of Education of City of Fargo (1888) 5 Dak. 259, 38 NW433.

Grand Lodge I.O.O.F. of West Virginia v. Board of Education of Independent School Dist. of Elkins (1922) 90 W. Va. 8, SE 440.

Hlebanja v. Brewer (1931) 236 NW 296.

Hughes v. Outlaw (1916) 197 Ala. 452, 73 So. 16.

Independent School Dist. of Stuart v. Carter (1915) 168 Iowa 311, 150 NW 445.

Independent School Dist. No. 1 v. Bordewyk (1932) 241 NW 619.

Kidd v. Joint School Dist. No. 2, 194 Wisc. 353, 216 NW 479.

Kerr v. Perry School Township (1904) 162 Ind. 310, 70 NE 246.

Lake Farm v. District Board of School Dist. No. 2 (1914) 179 Miss. 171, 146 NW 115.

Logan County v. Bangs (1920) 144 Ark. 34, 221 SW 1060.

Logeden v. Jones (1924) 311 Ill. 425, 143 NE 56.

Major v. Cayce (1895) 98 Ky. 357, 33 SW 93.

Mansfield Board of Education v. State Board of Education (1925) 101 N. J. 474, 129 A. 765.

Mercer Union School Dist. v. Coolspring Township,School Dist. No. 21 P 176.

Morris v. Vandiver (1933) 145 So. 228

Mt. Hope School Dist. v. Hendrickson (1916) 197 Iowa 191, 197 NW 47.

New Hampton Institution v. Northwood School Dist. (1907) 68 A. 538.

People v. Board of Education of School Dist. No. 36 (1917) 206 Ill. App. 381

People ex rel Brooklyn Childrens Aid Society v. Hendrickson (1908) 109 N. Y. 403.

People v. Moore (1909) 240 Ill. 408 88 NE 979.

Roberson v. Oliver (1919) 189 Ala. 428, 66 So. 695.

Roberts v. Wilson (1927) 297 SW 419.

Rockwell v. Independent School Dist. of Rapid City (1925) 48 S. D. 137.

Sommers v. Putnam (1925) 113 Ohio 177, 148 NE 682.

Sandry v. Brooklyn Ind. Dist. No. 78, (1921) 47 N. D. 444, 182 NW 689.

School District No. 288, Cotton County v. Board of Education of City of Devol, Cotton County (1928) 129 Okla. 94, 263 P. 445.

School District No. 16 v. Union High School No. 1 60 Colo. 292, 152 P. 1149.

Scott County Board of Education v. Crumbaugh, (1916) 213 Ky. 771, 281 SW 977.

Sheldon Poorhouse v. Town of Sheldon (1900) 72 Vt. 126, 47 A. 542.

Smith v. Barnard (1933) 21 P. 2nd. 204

State ex rel Crosland v. Board of Education of School Dist. No. 40 (1904) 91 Minn. 268,77 NW 885.

State ex rel Halbert v. Clymer (1912) 164 Mo. App. 671, 147 SW 1119.

State ex rel Mickey v. Selleck (1906) 76 Nebr. 747, 107 NW 1022.

State Teachers College v. Morris (1932) 144 SO 374.

State v. Valley City Special School District (1919) 43 N. D. 464, 173 NW 750.

Town District of Hardwick v. Town District of Wolcott (1905) 78 Vt. 23, 61 A 471.

Town of Wallingford v. Town of Clarendon (1908) 81 Vt. 245, 69 A. 734.

Town of Wrenthan v. Fales (1904) 185 Mass. 539, 70 NE 936.

Vincent v. County Board of Education of Talladega County (1931) 131 SO 893.

Young v. Trustees of Fountain Inn Graded School (1897) 64 S. C. 131, 41 S. E. 834.

Wilson v. Stanford (1909) 133 Ga. 483, 66 SE 258.